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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications)	
Act of 1996)	
)	
Applications for Consent to the Transfer)	CC Docket No. 98-141
of Control of Licenses and Section 214)	
Authorizations from Ameritech Corporation,)	
Transferor to SBC Communications Inc.,)	
Transferee)	
)	
Common Carrier Bureau and Office of Engineering)	NSD-L-00-48
and Technology Announce Public Forum on)	DA 00-891
Competitive Access to Next-Generation)	
Remote Terminals)	

**RHYTHMS NETCONNECTIONS INC.
COMMENTS IN SUPPORT OF
ALTS LOOP PETITION**

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SUMMARY

The Association for Local Telecommunications Services (“ALTS”) has petitioned the Federal Communications Commission (“Commission”) for a declaratory ruling that would clarify, interpret and modify the rules governing nondiscriminatory loop provisioning in an effort to foster facilities-based competition in the broadband market. The federal regulations that ALTS proposes will ensure continued facilities-based competition through the implementation of uniform, minimum requirements on the ILECs’ obligation to unbundle loops in a procompetitive manner. In support the ALTS Petition, Rhythms urges the Commission to adopt the minimum requirements for unbundled loop provisioning that represent the Commission’s interpretation of the ILECs’ obligations.

Specifically, Rhythms concludes that national loop provisioning rules would promote competition by counteracting the ILECs’ incentive to discriminate against CLECs. The Commission should set a maximum 3-day interval for provisioning of unbundled loops to encourage prompt service to wholesale customers. To guarantee CLECs access loop information on a nondiscriminatory basis, the Commission should impose a federal deadline for fully-operational, electronic OSS interfaces. The Commission should also explicitly restate that all nonrecurring charges for unbundled loops must adhere to TELRIC principles, including those costs associated with the de-conditioning of loops. Further, the Commission should establish self-executing enforcement mechanisms to foster timely compliance by the ILECs.

Rhythms also recommends that the Commission reiterate that the ILEC loop network must be unbundled and changes to that network must permit such unbundling. In other words, ILECs may not change their network infrastructure and subsequently claim that it is not technically feasible to unbundle that network. Rather, ILECs must implement network changes

consistent with and in contemplation of their obligation to unbundle the network for competitors. Similarly, the Commission should reiterate that all CLECs, regardless of the technologies or services they plan to deploy on the loop, are entitled to obtain the full unbundled loop, as defined by this Commission's rules. Likewise, the Commission should re-emphasize that ILECs must unbundle and provide any and all subloop elements at any technically feasible point in their networks. With the implementation of minimum requirements governing the nondiscriminatory provisioning of unbundled loops, the Commission will ensure that consumers obtain the benefits of continued facilities-based competition.

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**RHYTHMS NETCONNECTIONS INC.
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Rhythms NetConnections Inc., and Rhythms Links Inc. (collectively "Rhythms") hereby submit these comments supporting the Petition for Declaratory Ruling: Broadband Loop Provisioning¹ filed by the Association for Local Telecommunications Services ("ALTS") pursuant to the May 24, 2000 Public Notice issued by the Federal Communications Commission ("Commission").²

¹ ALTS Petition for Declaratory Ruling: Broadband Loop Provisioning, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48 (filed May 17, 2000)("ALTS Petition").

² Public Notice, Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning, DA 00-1141, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48 (rel. May 24, 2000).

INTRODUCTION

In its Petition for Declaratory Ruling: Broadband Loop Provisioning, ALTS urged the Commission to establish a regulatory scheme that will provide competitors nondiscriminatory access to loops in accordance with the unbundling requirements of the Telecommunications Act of 1996 (“1996 Act”).³ Specifically, ALTS requested a declaratory ruling that “governs all aspects of the provisioning process for UNE loops that support broadband technologies, clarifying and modifying the Commission’s existing rules and policies in a comprehensive manner for the unique circumstances of the broadband environment.”⁴

As with all competitors, Rhythms depends upon the ILECs for loops in order to assemble the components of its national, “always on,” high bandwidth digital network. By use of digital subscriber line (“xDSL”) technology over ILEC loops, Rhythms currently delivers its broadband services to its end users across the “last mile” of its network. Rhythms, therefore, must obtain these loops in a timely and cost-effective manner to meet customer needs and expectations, however ordering unbundled loops from the ILECs is often met with unnecessary delays and excessive costs. Based on its experience in obtaining loops from the incumbent local exchange carriers (“ILECs”) nationwide, Rhythms unequivocally supports the ALTS Petition.

DISCUSSION

I. FEDERAL REQUIREMENTS ON NONDISCRIMINATORY ACCESS TO BROADBAND LOOPS WILL ENSURE CONTINUED COMPETITION IN THE ADVANCED SERVICES MARKET

The Telecommunications Act of 1996 sought to create competition in local services by allowing competitive local exchange carriers (“CLECs”) nondiscriminatory access to those component elements of the ILECs’ network that are necessary to provide both basic and advanced

³ ALTS Petition at 32-33.

⁴ ALTS Petition at 2.

services.⁵ Since August 1996, the Commission has repeatedly stressed that local loops must be unbundled for CLECs seeking to offer local services generally,⁶ and advanced services specifically access to unbundled loops.⁷ Yet, as noted in the ALTS Petition, “[d]espite the FCC’s diligence, . . . many CLECs experience continual delay and frustration in obtaining UNE loops—the cornerstone of local competition—from the ILECs.”⁸ Rhythms agrees with ALTS that national rules on loop provisioning will help mitigate the significant impact of these ILEC tactics.

Rhythms commends the Commission for setting forth broad guidelines for the ILECs’ provisioning of loops in the implementation of the 1996 Act. Nevertheless, disparate state implementation of the ILECs’ obligations to provide nondiscriminatory access to loops under the 1996 Act and this Commission’s orders—engendered by the ILECs’ refusal to acknowledge their statutory and regulatory obligations—creates market and competitive conditions that undermine the CLECs’ ability to bring the benefits of competition uniformly to consumers nationwide. As ALTS correctly observes, “any policy statement issued from this Commission provides both the industry and state commissions guidance that more assuredly leads to an equitable result.”⁹ Accordingly, ALTS suggests several concrete steps—principally to clarify, interpret and modify its rules governing crucial aspects of ILEC loop provisioning—that the Commission can, and should, in conjunction with the ongoing efforts of the state commissions, take to further the procompetitive goals of the 1996 Act.

⁵ 47 U.S.C. § 251; *see also* The Telecommunications Act of 1996, § 706 (1996).

⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238, ¶ 165 (rel. Nov. 5, 1999)(“*UNE Remand Order*”); *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 1st Report and Order, FCC 96-325, ¶ 366 (rel. Aug. 6, 1996)(“*Local Competition Order*”).

⁷ *UNE Remand Order* at ¶ 190-195; *In the Matter of Deployment of Wireless Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, F.C.C. 98-188 ¶ 3 (rel. Aug. 7, 1998)(“*Advanced Services MO&O*”).

⁸ ALTS Petition at 1.

⁹ ALTS Petition at 30.

A. The Commission has Authority to Adopt National Loop Provisioning Rules.

Commission action on loop provisioning is appropriate and permissible. As the

Commission has noted, it may adopt federal regulations that:

facilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until after years of litigation, remedy significant imbalances in bargaining power, and establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish.¹⁰

Each of these objectives would be achieved by Commission action on loop provisioning as presented by ALTS.

Establishing federal requirements will facilitate administration of Sections 251 and 252 by creating consistent and uniform nationwide practices for loop provisioning that will allow all consumers to benefit from the deployment of advanced services. For example, a maximum loop provisioning interval will ensure customers in Montana and Oregon can receive loops in the same timeframe as consumers in Texas. By articulating uniform loop provisioning rules, the Commission will, in turn, expedite negotiations and arbitrations, eliminating the need to negotiate or arbitrate controversial issues regarding the ILECs' loop unbundling obligations in numerous forums.

Furthermore, federal requirements will generate uniform interpretations on contentious legal issues, remedy significant imbalances in bargaining power, and allow for nationwide competition. For example, numerous state commissions are presently engaged in heated proceedings to interpret the Commission's requirements on pricing line de-conditioning. A federal rule on this issue would efficiently and effectively provide a direct, uniform interpretation of the ILECs' obligations, and preclude unsustainable differences likely to arise from independent state determinations. Likewise, resolution by the Commission of appropriate, nondiscriminatory loop provisioning intervals would

¹⁰ *Local Competition Order* ¶ 41.

clearly assist CLECs in confronting the economic and operational advantages possessed by the ILECs at the bargaining table, especially where the Section 271 carrot is absent. Setting a date certain for which ILECs must provide access to loop information, in turn, would obligate all ILECs to accelerate the completion of their OSS so that CLECs can efficiently and promptly service their customers permitting robust competition. Federal requirements that promote standard, nondiscriminatory practices, by which ILECs will provision loops to the CLECs, allow all carriers, CLECs and ILECs, to serve their customers more efficiently and effectively. For all these reasons, Rhythms endorses ALTS proposal that the Commission establish specific national loop provisioning rules.

B. National Loop Provisioning Rules are Necessary.

Setting minimum requirements for loop provisioning as a matter of federal law will permit CLECs to aggressively enter the market and expand the range of consumer services delivered over the local loop more uniformly throughout the country. Specifically, Rhythms, as a data CLEC, supports the following ALTS proposals as designed to clarify, interpret and modify of the Commissions' rules governing crucial aspects of ILEC loop provisioning.¹¹

1. The Commission should adopt maximum intervals for provisioning of UNE loops.

The ability of competitors, such as Rhythms, to meet the competitive demands of the advanced services market depends upon the timeliness and accuracy of ordering new lines to advanced services customers, whether those lines must be migrated from existing services or are newly-installed. ALTS recognized that "[t]he lack of intervals makes it virtually impossible for competitive LECs to market xDSL services with a promise of timely service delivery, because such

¹¹ ALTS Petition at 3.

delivery is contingent on widely variant provisioning intervals[.]”¹² In order to comport with the nondiscriminatory requirements of Section 251 (as well as 271) and this Commission’s rules, the Commission must ensure that ILECs do not employ disparate provisioning intervals for the same facilities based on the CLEC use of the loop. Thus, the interval for provisioning loops—including broadband xDSL loops—should not be any longer than the interval for provisioning the loop for other services.

Specifically, Rhythms proposes that the Commission adopt a maximum 3-day loop provisioning interval, consistent with those recently established by the Texas Commission in the arbitration with Rhythms.¹³ Furthermore, the Commission should ensure that CLECs can order loops to technical specifications that meet any industry standard within the specified interval. Prior to delivery of the loop, ILECs should also be required to verify to CLECs that the delivered loops will perform as specified, in order to minimize customer disruption and delay.¹⁴ These aspects are essential for commercial launch and must be performed in an efficient and timely manner.

Finally, the Commission should implement rules to ensure that CLECs have the ability to select loops from the ILEC loop inventory to maximize services to the customer. Thus, at a CLEC’s request, ILECs should find spare or alternative loop facilities that may not need de-conditioning (*e.g.*, load coils removed, acknowledge the presence of bridged taps) or provision a copper loop instead of a DLC-provisioned loop. For example, if a customer has two loops currently

¹² ALTS Petition at 26.

¹³ Petition of Rhythms Links Inc. for Arbitration to Establish and Interconnection Agreement with Southwestern Bell Telephone Company, Docket No. 20226, Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company, Docket No. 20272, Public Utility Commission of Texas, Arbitration Award, 81-82 (issued Nov. 30, 1999); Petition of Covad Communications Company and Rhythms Links Inc. against Southwestern Bell Telephone Company and GTE Southwest Inc. for Post-Interconnection Dispute Resolution and Arbitration under the Telecommunications Act of 1996 regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing, Public Utility Commission of Texas, Docket No. 22469, Interim Award, 23-24 (issued June 06, 2000).

provisioned, one on fiber and one on copper, the ILECs should at a CLEC's request rearrange the loops to provide DSL over the copper loop. Where this is not an option, CLECs should, nevertheless, receive de-conditioned loops within the specified loop interval.¹⁵ For these reasons, Rhythms concurs with ALTS that the Commission should also "adopt a federally binding maximum interval for ILEC loop de-conditioning that provides uniform guidance to all carriers and fosters rapid and widespread deployment of advanced services."¹⁶

2. ILECs should have a federal deadline by which all OSS interfaces must electronically provide all loop information to which the ILEC has access.

Competitors must be able to discern the capability of a loop for the provisioning of xDSL services in the same manner and timeframe that the ILECs use for provisioning of their own loop-based services, including all advanced services.¹⁷ The Commission has consistently recognized the significant competitive need for CLEC access to loop make-up information.¹⁸ Initially, the *Advanced Services MO&O* explicitly concludes that "[i]f new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent whether a loop is capable of supporting xDSL-based services."¹⁹

Underscoring this finding, the Commission stated recently in the *UNE Remand Order* that CLECs must have "nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about

¹⁴ *Application of Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 288 (rel. Dec. 22, 1999) ("BA 271 Order").

¹⁵ *UNE Remand Order* ¶ 431.

¹⁶ ALTS Petition at 28.

¹⁷ *UNE Remand Order* ¶ 431.

¹⁸ *Id.* ¶ 431; *Advanced Services MO&O* ¶ 56.

¹⁹ *Advanced Services MO&O* ¶ 56.

whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install.”²⁰ The *UNE Remand Order* also explicitly prohibits any ILEC from digesting or filtering any of the information before providing the CLECs access, “[o]therwise, incumbent LECs would be able to discriminate against other xDSL technologies in favor of their own xDSL technology.”²¹ Moreover, this Commission acknowledged that CLECs need real-time access to win customers in the nascent advanced services arena, and thus to develop a truly competitive market for broadband services, because “[i]t would be unreasonable, for instance, if the requesting carrier had to wait several days to receive such information from the incumbent if the incumbent’s personnel have the ability to obtain such information in several hours.”²²

All DSL providers, including Rhythms, must have access to the ILECs’ electronic, automated systems that allow rapid and efficient access to the information about the technical make-up of a potential customer’s loop, as well as on-line ordering and maintenance systems. ILECs that provide xDSL services presently have access to comprehensive loop information by virtue of their exclusive control over the local network and the engineering and plant databases they utilize. The *UNE Remand Order* allows CLECs access to loop information, whether electronic or manual,²³ as long as “such information exists anywhere within the incumbent’s back office and can be accessed by any of the incumbent LEC’s personnel.”²⁴ Notwithstanding this Commission’s mandate, however, the ILECs continue to deny CLECs the requisite access to these existing databases, which are crucial to the deployment of broadband services.

²⁰ *UNE Remand Order* ¶ 427.

²¹ *Id.* ¶ 428.

²² *Id.* ¶ 431.

²³ *Id.* ¶ 429.

²⁴ *Id.* ¶ 430.

For example, while SBC has recently begun to provide both unaffiliated CLECs and its separate affiliate with access to its Complex Products Service Order System (“CPSOS”) for loop prequalification, only the separate affiliate has access to CPSOS for ordering and order status.²⁵ In a meeting on the Plan of Record to be filed in compliance with its federal merger conditions, SBC personnel acknowledged that its internal DSL operations utilized pre-ordering and ordering systems different than those used by competitors.²⁶ When telemarketing to consumers to promote SBC ILEC services, while the consumer is on the line SBC pre-qualifies the consumer’s line for the ADSL service of the separate advanced services affiliate.²⁷ If the pre-qualification is successful, the SBC marketing personnel will offer the affiliate’s ADSL service to the consumer and puts the order into the system for the SBC affiliate.²⁸ This practice on its face provides a discriminatory, anticompetitive advantage to the SBC affiliate.

As ALTS points out, “[a]n incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops . . . while competing providers are relegated to a slower and more cumbersome process to obtain that information.”²⁹ Nevertheless, ILECs blatantly continue to withhold or delay the competitors’ ability to access loop information.³⁰ To ensure timely and uniform implementation of this Commission’s mandates, the Commission

²⁵ *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, Supplemental Affidavit of Ron Brown in Support of SBC’s Application at ¶ 22.

²⁶ *Revision of 86 Ill. Adm. Code 790*, Ill. CC Docket 99-0511, Rhythms Ex .2.0, 14 (April 10, 2000).

²⁷ *Id.*

²⁸ *Id.*

²⁹ ALTS Petition at 6, *citing Advanced Services MO&O* ¶ 56.

³⁰ For example, the SBC ILEC in Illinois explicitly continues to ignore its obligation to allow CLECs to access its databases. *Revision of 86 Ill. Adm. Code 790*, Ill. CC Docket No. 99-0511, Ameritech Illinois Ex. 6.0, p. 13-14 (May 23, 2000) (“Rhythms would require access to Ameritech Illinois’ inventory of nonworking loops in the Loop Facility Assignment Center System (LFACS) database. The LFACS database contains not only an inventory of unassigned cable loops, but information concerning all of Ameritech Illinois’ customers. This information is proprietary and access by any CLEC is not allowed.”)

should amend its rules to establish a deadline by which ILECs must make electronic access to loop make-up databases available to CLECs.

3. All loop de-conditioning charges and other recurring and nonrecurring charges must adhere to TELRIC principles.

Until the ILECs conform to TELRIC principles for loop de-conditioning, the ILECs will continue to hinder the deployment of advanced services by forcing CLECs to pay inflated rates for unbundled loops, as well as the de-conditioning of those loops. When a CLEC requests a conditioned loop, the ILEC must provide a clean, data ready loop as a part of the ILEC loop provisioning required by federal law.³¹ Yet many ILECs seek to unlawfully impose de-conditioning charges contrary to the TELRIC pricing methodology required by the 1996 Act.

ALTS seeks “an affirmative Commission ruling that requires ILEC de-conditioning charges to reflect the forward-looking cost of provisioning loops in the most efficient, least costly telecommunications network.”³² This Commission has made clear that nonrecurring charges—including charges for loop de-conditioning—must be based on a forward-looking network design consistent with TELRIC.³³ Specifically, the *UNE Remand Order* requires that the ILECs’ charges for the removal of xDSL impediments comport with the Commission’s mandated TELRIC pricing principles.³⁴ Thus, the Commission’s rules state that nonrecurring charges “shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.”³⁵ Accordingly, the Commission found that in calculating the forward-looking

³¹ *UNE Remand Order* ¶ 172.

³² ALTS Petition at 29.

³³ 47 C.F.R. 51.319(a)(3)(ii) (“Incumbent LECs shall recover the cost of line conditioning from the requesting telecommunications carrier in accordance with the Commission’s forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act.”); *UNE Remand Order* ¶ 194 citing 47 C.F.R. § 51.507(e). See generally 47 C.F.R. §§ 51.501 *et seq.*; *Local Competition Order* ¶¶ 749-751.

³⁴ *UNE Remand Order* ¶ 194.

³⁵ 47 C.F.R. § 51.507(e).

cost, “embedded costs may not be considered.”³⁶ Rhythms, therefore, supports ALTS’ proposal to ensure that ILECs’ charges reflect the forward-looking cost of provisioning loops in forward-looking, efficient, least-cost telecommunications network.

Furthermore, consumers are directly impacted by unscrupulous ILEC charging practices. As the ALTS petition correctly observes, “in many cases the customers whose loops require de-conditioning must depend on CLECs to receive advanced services, having been long abandoned by ILEC deployment plans.”³⁷ The Commission has already recognized “incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits.”³⁸ CLECs have still been assessed hundreds, even thousands, of dollars *for a single copper loop* under the guise of de-conditioning charges. Such non-TELRIC-based charges jeopardize the consumer’s ability to receive broadband services from the CLEC—their only available option. Accordingly, Rhythms supports the ALTS proposal that the Commission clarify that de-conditioning charges be set based on a forward-looking TELRIC methodology.

**4. ILEC failure to comply with the Commission’s rules
should result in established *prima facie* federal penalties.**

Rhythms also agrees with the ALTS proposal that the Commission institute self-executing enforcement mechanisms to ensure that access to loops becomes, and remains, nondiscriminatory.³⁹ As ALTS concludes “it is essential that the Commission ensure that its rules are clearly stated and that appropriate enforcement mechanisms are in place so that enforcement of the rules is swift and

³⁶ 47 C.F.R. 51.505(d)(1).

³⁷ ALTS Petition at 30.

³⁸ *UNE Remand Order* ¶ 194.

³⁹ ALTS Petition at 31.

certain.”⁴⁰ To date, enforcement of the ILEC obligations under the 1996 Act and Commission rules has been hampered by the need to pursue actions in a myriad of federal and state forums. These proceedings are administratively burdensome and unnecessary. By establishing clear benchmarks for loop provisioning failures and attaching these performance criteria to tough monetary penalties, ILECs would be forced to more carefully assess their compliance with their federal obligations. For these reasons, Rhythms supports the Commission in adopting self-executing monetary penalties with a rebuttable presumption of applicability.

II. FEDERAL REQUIREMENTS WILL CONTINUE TO FOSTER FACILITIES-BASED COMPETITION WITHOUT HINDERING TECHNOLOGICAL INNOVATIONS

The Commission has recognized that the ILECs’ overwhelming incentive to hinder competition in the local telecommunications market prompts the need for regulation of the ILECs provisioning of wholesale services.⁴¹ As ALTS notes, “ILECs operate under an ambiguous and incomplete regulatory mandate to help their competitors attain customers, placing them in an awkward position of balancing two equal but opposite incentives.”⁴² The 1996 Act addressed the ILECs’ existing network and imposed an obligation to open that network to competition.⁴³ The Commission must ensure that ILECs do not undermine the Act by changing their loop technology and then once again refuse competitive access to the new loop plant in an effort to foreclose competition. Thus, the Commission must examine the extent to which the ILECs might prevent competition in broadband services within a loop network topology conceived and constructed

⁴⁰ ALTS Petition at 2, n. 2 and at 31.

⁴¹ *Local Competition Order* ¶ 10. “Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition[.]” *Id.*

⁴² ALTS Petition at 7.

⁴³ 47 U.S.C. § 251.

simultaneously with their incentive to maintain monopolistic control over telecommunications facilities.

A. To Combat the ILEC's Incentive to Hinder Competition the Commission Established a Regulatory Regime Promoting Facilities-Based Competition.

In its Petition, ALTS urges the Commission “to ensure that the local network remains amenable to the [Section 251] unbundling requirements of the 1996 Act.”⁴⁴ Congress enacted the 1996 Act—Sections 251 and 252 in particular—in an effort to direct the incumbents to open the local telecommunications market to a facilities-based competition.⁴⁵ In implementing Sections 251 and 252, the Commission recognized the importance of facilities-based competition, “because only facilities-based competitors can break down the incumbent LEC’s bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings.”⁴⁶ In the *UNE Remand Order*, the Commission acknowledged that “the greatest benefits may be achieved through facilities-based competition, and that the ability of requesting carriers to use unbundled network elements, . . . , is a necessary precondition to the subsequent deployment of self-provisioned network facilities.”⁴⁷ Thus, a key goal of this Commission has been—and should continue to be—ensuring continued facilities-based competition to protect consumers against the monopolistic behavior inherent in the ILECs’ business practices.

This Commission’s rules must explicitly require ILECs to ensure that their networks contemplate and are designed to support access and unbundling to CLECs. ILECs cannot be heard

⁴⁴ ALTS Petition at 11.

⁴⁵ *Local Competition Order* ¶¶ 10-15.

⁴⁶ *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-141, ¶¶ 4, 23 (rel. July 7, 1999)(“Moreover, only facilities-based competition can fully unleash competing providers’ abilities and incentives to innovate, both technologically and in service development, packaging, and pricing. . . . In order for competitive networks to develop, the incumbent LECs’ bottleneck control over interconnection must dissipate.”). See also *UNE Remand Order* ¶ 7.

to say that post-Act network changes have rendered it technically infeasible to unbundle. In other words, ILECs may not change their networks so as to preclude unbundling, effectively relegating competitors to a reseller role by obviating their ability to operate as a facilities-based provider using unbundled network elements. Instead, ILECs must be required to implement network changes that enable them to meet their unbundling obligation.

B. The Commission Should Establish Federal Requirements for Nondiscriminatory Provisioning of Loops and Subloops.

The Section 251 unbundling obligations for loop and subloop provisioning must promote facilities-based competition by allowing CLECs access to all portions of the loop in some or all of its constituent parts. In its Petition, ALTS recognized that to implement nondiscriminatory provisioning CLECs must have access to the entire loop and to any subloop element at any technically feasible point.⁴⁸ Rhythms supports this proposal.

Since the issuance of the *UNE Remand Order*, several ILECs have unilaterally implemented different definitions of local loop depending on the CLEC service they believe will be provided over that loop. For instance, certain ILECs will only provide data CLECs with a “local loop” that consists of the facility between the customer premises and the remote terminal, as opposed to the central office.⁴⁹ This conception of “loop” fails to comport with the Commission’s definition of loop—“any transmission facility that runs from a central distribution frame (or its equivalent) *in an incumbent central office* and the loop demarcation point at an end-user customer premises.”⁵⁰

As discussed below, in conjunction with their new, unsanctioned loop definition, these ILECs have also, summarily, and impermissibly limited their subloop unbundling obligations as

⁴⁷ *UNE Remand Order* ¶ 5.

⁴⁸ ALTS Petition at 12-13.

⁴⁹ SBC interprets the *UNE Remand Order* to only allow the CLEC to order the subloop portion from the customer premises to the service area interface (SAI) on a nondiscriminatory basis. See Attachment A, SBC’s Broadband Service Product Overview, Diagram 1 (June 15, 2000).

pertaining only to copper loop distribution plant. Thus, the actual effect of these propositions is to strand certain (but not all) CLECs at the remote terminal, or SAI, with no ability to obtain an unbundled facility to the central office. The Commission should once again reiterate that all CLECs, regardless of the technologies or services they plan to deploy on the loop, are entitled to obtain the full unbundled loop, as defined by this Commission's rules. To hold otherwise would sanction impermissible discrimination.

In addition, the Commission should also re-emphasize that ILECs are obligated to unbundle and provide any or all subloop elements at any technically feasible point in their networks. The Commission intentionally defined the subloop broadly to include "any portion of the loop that is technically feasible to access at terminals in the ILEC's outside plant."⁵¹ CLECs, therefore, may (1) access any of the feeder, feeder distribution interfaces or distribution components of the loops as individual network elements,⁵² (2) at any technically feasible points, including, but not limited to, poles, pedestals, network interface devices, minimum points of entry, points of interconnection, main distribution frames, remote terminals, and feeder distribution interfaces.⁵³ Furthermore, the Commission asserted that "[o]ur intention is to ensure that *the loop definition will apply to new as well as current technologies*, and to ensure that competitors will continue to be able to access loops as an unbundled network element as long as that access is required[.]"⁵⁴

Yet, despite the Commission's clear and expansive rules regarding subloops, ILEC implementation has evidenced a refusal to embrace either the letter or spirit of the sub-loop unbundling obligations. For example, Bell Atlantic's *UNE Remand* implementation tariff in New

⁵⁰ 47 C.F.R. § 51.319(a)(emphasis added); *Local Competition Order* ¶ 380.

⁵¹ 47 C.F.R. § 51.319(a)(2).

⁵² *UNE Remand Order* ¶ 202.

⁵³ *Id.*

⁵⁴ *UNE Remand Order* ¶ 167(emphasis added); 47 C.F.R. § 51.319(a)(1).

York defines the only available “subloop” as metallic distribution pairs or facilities between the feeder distribution interface and the end user location.⁵⁵ This ILEC implementation falls far short of the Commission’s rules. First, Bell Atlantic, as do other ILECs, refuses to unbundle fiber subloop elements, instead impermissibly focusing only on metallic facilities. This limitation runs directly afoul of the Commission’s mandate to unbundle *all* technologies. Second, the only facility offered is the distribution portion of the loop. CLECs are not offered—as required by Commission rules—any other subloop element, including feeder or FDI. Finally, CLECs are limited to access at a single point in the network, the feeder distribution interface rather than the Commission-mandated “any technically feasible point.” Thus, it is clear that in order to avoid protracted litigation in every state, Commission action is required.

The fact that ILECs must unbundle *all* transmission facilities—using old or new technologies—between the customer premises and the central office helps ensure that the local telecommunications market will remain open to facilities-based competition. As CLECs have different networks and provide various services, the CLECs may need access to different subloop components of the local loop. Their ability to do so foster rigorous competition and innovation that will bring a variety of service alternatives to consumers. Indeed, in the *UNE Remand Order*, the Commission directed ILECs to provide CLECs with nondiscriminatory access to subloops in order to “facilitate rapid development of competition, encourage facilities-based competition, and promote the deployment of advanced services.”⁵⁶ The Commission refused to limit subloop unbundling to only the copper subloop portion of the local loop, recognizing that “[i]n those instances where competitive carriers are able to self-provision a portion of the loop, lack of access to the part of the incumbent’s loop they need could impede competitors’ ability to develop their

⁵⁵ See e.g., New York Telephone Company, P.S.C. No. 916, original page 114, § 5.19.1.1 (filed May 17, 2000).

own network architecture and provide new service offerings.”⁵⁷ Thus, the Commission must clarify that ILECs cannot restrict their subloop service offerings to unbundling only certain portions of the local loop.

Consumers will clearly benefit from a facilities-based environment in the loop network where ILECs accept their obligation to unbundle *all* subloop portions of the local loop on a nondiscriminatory basis by releasing *all* features, functions and capabilities of those subloops. Accordingly, Rhythms supports a directive from the Commission requiring ILECs to provide access to subloops wherever possible in a manner that will support nondiscriminatory provision of multiple services over a shared line.

⁵⁶ *UNE Remand Order* ¶ 207; *see also Id.* ¶ 206.

⁵⁷ *Id.* ¶ 215.

CONCLUSION

For all of these reasons, Rhythms respectfully requests that the Commission promptly render a declaratory ruling regarding the nondiscriminatory provisioning of loops in accordance with the specific mechanisms set forth in the ALTS Petition. Specifically, Rhythms believes the Commission should:

- (1) Establish specific national loop provisioning rules that act as minimum unbundling requirements;
- (2) Adopt a maximum 3-day loop provisioning interval, consistent with those recently established by the Texas Commission in the arbitration with Rhythms;
- (3) Impose a federal deadline for fully-operational, electronic OSS interfaces for CLECs to access loop information;
- (4) Reiterate that nonrecurring charges for unbundled loops must adhere to TELRIC principles, including those costs associated with the de-conditioning of loops;
- (5) Implement self-executing monetary penalties with a rebuttable presumption of applicability to ensure timely compliance to the minimum unbundling requirements;
- (6) Emphasize that ILEC unbundling obligations must be adapted as the network topology evolves;
- (7) Reiterate that all CLECs, regardless of the technologies or services they plan to deploy on the loop, are entitled to obtain the full unbundled loop, as defined by this Commission's rules; and
- (8) Re-emphasize that ILECs must unbundle and provide any or all subloop elements at any technically feasible point in their networks.

Respectfully yours,



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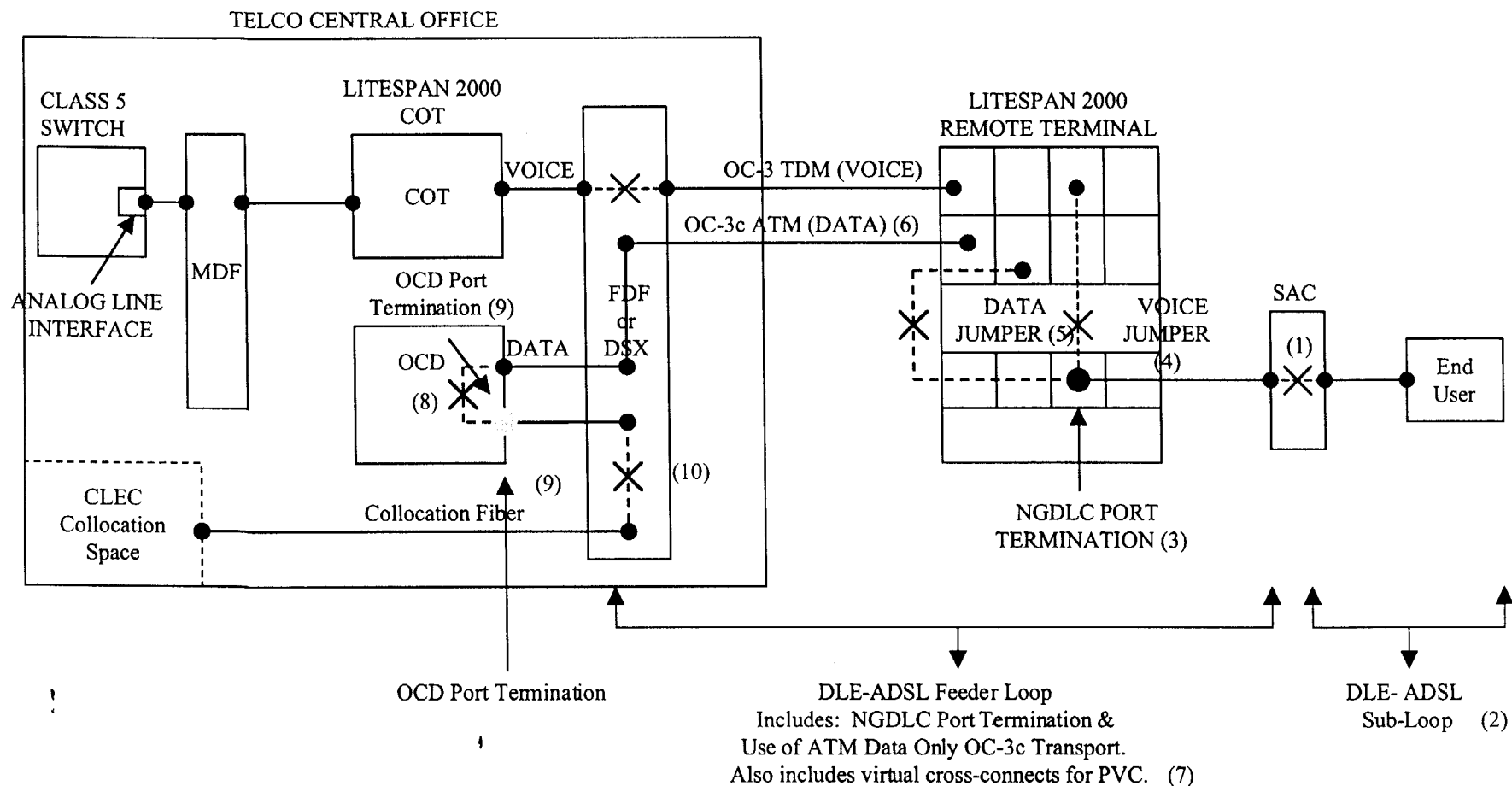
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ATTACHMENT A

DIAGRAM 1: **BROADBAND DATA SERVICE** **(LINE SHARED OR DATA ONLY)**



(1) DLE ADSL SAC Cross Connect

(2) DLE-ADSL HFPSL

(3) NG DLC Port Termination

(4) NGDLC Virtual Circuit - Voice

(5) NGDLC Virtual Circuit - Data

(6) OC-3c Dedicated for Data

(7) DLE-ADSL Feeder

(8) OCD Virtual Cross Connect

(9) OCD Port Termination (OC-3 or DS3)

(10) OCD Cross-Connect to Collocation (or UDT)

CERTIFICATE OF SERVICE

I, Leslie LaRose, do hereby certify that on this 23rd day of June, 2000, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage prepaid, to the following:


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